

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 29, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

JASON C. YOUKER (1),

Defendant.

NO: 2:14-CR-152-RMP-1

ORDER DENYING DEFENDANT'S
CONSTRUED RENEWED MOTION
FOR COMPASSIONATE RELEASE

BEFORE THE COURT is Defendant Jason Youker's Motion for Reconsideration, ECF No. 771, which the Court construes as a renewed Motion¹ for Sentence Reduction under 18 U.S.C. § 3582(c)(1)(A) through compassionate release. The Court previously stayed briefing of the Motion to allow Defendant to benefit from appointment of the Federal Defenders of Eastern Washington and Idaho in a

¹ The Court denied without prejudice Mr. Youker's first Motion for Compassionate Release for failure to exhaust administrative remedies. ECF No. 767. The Government had filed an extensive opposition to Mr. Youker's first Motion for Compassionate Release. ECF No. 757.

1 limited capacity to screen Defendant's request for compassionate release for
2 eligibility and conflicts. ECF No. 773; *see also* General Order 20-9-1 (Aug. 30,
3 2020).

4 After completing the screening, the Federal Defenders withdrew from further
5 representation of Defendant. On January 15, 2021, Defendant filed a supplement to
6 his Motion for Sentence Reduction indicating that he was seeking to obtain his
7 medical records as well as a declaration from his mother from the Federal Defenders.
8 ECF No. 787 at 1–2. The Court extended Defendant's opportunity to provide further
9 briefing to the Court. ECF No. 788. This matter became ripe for hearing when
10 Defendant filed his supplemental brief and attachments on March 5, 2021. ECF No.
11 790. Having reviewed Defendant's Motion, ECF No. 771, and supplemental brief,
12 ECF No. 790; the remaining record in this case; the relevant law; the Court is fully
13 informed.

14 **BACKGROUND**

15 On December 16, 2015, a jury convicted Mr. Youker of 32 counts involving
16 conspiracy to distribute methamphetamine and heroin, and unlawful possession of
17 firearms and ammunition in furtherance of those crimes. ECF No. 501. Mr.
18 Youker's adjusted offense level of 41 and criminal history category of III resulted
19 in an advisory U.S. Sentencing Guidelines range of 360 months to life. On May
20 24, 2016, Mr. Youker received a sentence of: 20-years of incarceration for Counts
21 1 through 9, with 20 years constituting the mandatory minimum for Counts 1, 8,

1 and 9; 10 years for Counts 10 and 11; and 96 months for Counts 14 through 21 and
2 23 through 35; with all sentences running concurrently. ECF No. 583.

3 Defendant is 47 years old and currently is incarcerated at Federal
4 Correctional Institution—Englewood (FCI Englewood) in Littleton, Colorado.
5 United States Bureau of Prisons (“BOP”) records indicate that Defendant’s
6 anticipated release date is October 3, 2031. Mr. Youker maintains that he has
7 already served 77 months of his sentence. ECF No. 790 at 8.

8 The medical records that Mr. Youker submitted indicate that he has ongoing
9 health issues with allergic rhinitis and conjunctivitis and pain in his left shoulder
10 and upper arm. ECF No. 790 at 11. Mr. Youker’s vision is affected by myopia
11 with astigmatism. *Id.* The medical records also indicate that Mr. Youker was
12 confirmed to be infected with COVID-10 on December 9, 2020, and his infection
13 was designated as “resolved” as of December 13, 2020. *Id.* However, Mr. Youker
14 self-reports a “greatly reduced breathing capacity” after he tested positive for
15 COVID-19. *See id.* at 6.

16 Mr. Youker proposes release to his mother’s residence in northwestern
17 Washington, following a 14-day quarantine after his release from BOP custody.
18 ECF No. 790 at 7. Mr. Youker asserts that his mother would benefit from his
19 assistance around the house, since she is recovering from recent back surgery, and
20 his children also would benefit from his release, both psychologically and by
21 receiving Mr. Youker’s financial support. *Id.* Mr. Youker submits a letter from

1 his mother confirming that she gives Mr. Youker permission to live with her and
 2 that she would benefit from his assistance. *Id.* at 12.

3 **LEGAL STANDARD**

4 A court may reduce a term of imprisonment on compassionate release grounds
 5 after considering the factors under 18 U.S.C. § 3553(a) to the extent that they are
 6 applicable and upon a finding that “extraordinary and compelling reasons warrant
 7 such a reduction” and the reduction is “consistent with applicable policy statements
 8 issued by the Sentencing Commission[.]” 18 U.S.C. § 3582(c)(1)(A).

9 The U.S. Sentencing Commission has issued a policy statement recognizing
 10 certain circumstances as “extraordinary and compelling reasons” for purposes of
 11 compassionate release, so long as “the defendant is not a danger to the safety of any
 12 other person or to the community, as provided in 18 U.S.C. § 3142(g)”:

13 (A) Medical Condition of the Defendant.—

14 (i) The defendant is suffering from a terminal illness (i.e., a
 serious physical and advanced illness with an end of life
 trajectory)

15 (ii) The defendant is—

16 (I) suffering from a serious physical or medical condition,

17 (II) suffering from a serious functional or cognitive
 impairment, or

18 (III) experiencing deteriorating physical or mental health
 because of the aging process,

19 that ‘substantially diminishes the ability of the
 defendant to provide self-care within the environment
 of a correctional facility and from which he or she is
 not expected to recover.’

20 (B) Age of the Defendant.—The defendant (i) is at least 65 years old;

21 (ii) is experiencing a serious deterioration in physical or mental
 health because of the aging process; and (iii) has served at least 10

1 years or 75 percent of his or her term of imprisonment, whichever
2 is less.

3 (C) Family Circumstances—

4 (i) The death or incapacitation of the caregiver of the
5 defendant's minor child or minor children.

6 (ii) The incapacitation of the defendant's spouse or registered
7 partner when the defendant would be the only available
8 caregiver for the spouse or registered partner.

9 (D) Other Reasons—As determined by the Director of the Bureau of
10 Prisons, there exists in the defendant's case an extraordinary and
11 compelling reason other than, or in combination with, the reasons
12 described in subdivisions (A) through (C).

13 U.S. Sentencing Guidelines Manual ("USSG") § 1B1.13.

14 Until December 21, 2018, the Court could reduce a term of imprisonment for
15 extraordinary and compelling reasons only upon motion by the Director of the BOP.
16 Following enactment of the First Step Act, a federal prisoner may move on his own
17 behalf for a sentence reduction and compassionate release after exhausting all
18 administrative appeals. 18 U.S.C. § 3582(c)(1)(A). Section 1B1.13, USSG, has not
19 been updated since enactment of the First Step Act.²

20 Relief under 18 U.S.C. § 3582(c)(1)(A) is available only after a defendant
21 has fully exhausted all administrative rights to appeal a failure of the BOP to bring
a motion on the defendant's behalf or the lapse of 30 days from the warden's

² The Court takes judicial notice that as of March 2021, there are an insufficient
number of confirmed commissioners to comprise a quorum for purposes of
amending the USSG.

1 receipt of Defendant's request for compassionate release, whichever is earlier.

2 18 U.S.C. § 3582(c)(1)(A).

3 **DISCUSSION**

4 Exhaustion

5 Defendant represents that he has exhausted administrative remedies by
6 requesting compassionate release from the warden at FCI Englewood on
7 September 1, 2020, and receiving a denial of the request on September 18, 2020.
8 ECF No. 790 at 2. Although Defendant does not indicate whether he appealed the
9 denial within BOP, the Court assumes without deciding that there were no other
10 avenues for relief for Defendant to exhaust at the agency level. *See* 18 U.S.C. §
11 3582(c)(1)(A).

12 Extraordinary and Compelling Reasons

13 Defendant is eligible for release only if he can demonstrate that he has
14 "extraordinary and compelling" circumstances that would justify compassionate
15 release in light of both 18 U.S.C. § 3582(c) and 18 U.S.C. § 3553(a), which the
16 United States Sentencing Commission directs courts to consider. USSG § 1B1.13.

17 Defendant argues that the BOP is inattentive to his and other inmates' medical
18 needs and asserts that he will not receive the access to medical specialists that he may
19 need should he become reinfected with COVID-19 or experience long-term health
20 problems from his previous infection. ECF No. 790 at 6. Defendant maintains that
21 FCI Englewood is over capacity and that the facility's response to the pandemic is

1 both inadequate and causes stress and suffering for inmates, through either prolonged
2 isolation or inability to avoid contracting the virus. *Id.* at 8–9. Defendant contends
3 that enduring these aggravated conditions of incarceration have fulfilled the objective
4 of punishment for his crimes and that only when he is released will he be able to
5 “seek professional medical assistance for his multiple medical issues.” *Id.*

6 Defendant has not shown that he has any health conditions or other personal
7 characteristics that amount to an extraordinary and compelling reason for reduction
8 of his sentence due to the pandemic. Defendant is not in a vulnerable age group and
9 does not have any chronic health conditions that make him particularly susceptible to
10 complications from COVID-19. Indeed, Defendant has not submitted any medical
11 documentation of health effects after he was confirmed to have contracted the virus
12 in December 2020. Rather, the medical documentation indicates that his infection
13 had “resolved” within days of his positive test. ECF No. 790 at 11.

14 Furthermore, the Court does not accept that the existence of COVID-19 in a
15 BOP facility qualifies as a basis for releasing the inmates of that facility. Nor does
16 the Court find that COVID-19 in and of itself is an extraordinary and compelling
17 reason to warrant a compassionate release under 18 U.S.C. § 3582(c), because
18 COVID-19 affects nonincarcerated individuals as well as incarcerated ones.
19 Therefore, the Court does not find any extraordinary or compelling reason particular
20 to Defendant to support compassionate release.

1 Section 3553(a) Factors

2 Moreover, the factors to be considered in imposing a sentence under 18 U.S.C.
3 § 3553(a) further weigh against compassionate release for Defendant, especially “the
4 nature and circumstances of the offense and the history and characteristics of the
5 defendant.” 18 U.S.C. § 3553(a)(1). By the time of Defendant’s instant convictions
6 for serious offenses involving drug distribution and firearms, he had a length criminal
7 history, beginning at age 15, featuring prior convictions for possession of cocaine
8 with intent to deliver, burglary with a handgun, and possession of cocaine with a
9 deadly weapon. The sentencing court found the following term of imprisonment,
10 followed by ten years of supervised release to constitute a just punishment for
11 Defendants’ instant convictions: “20 years with respect to each of Counts 1ss, and 4ss
12 through 9ss, 10 years with respect to each of Counts 2ss and 3ss; 10 years with
13 respect to each of Counts 10ss through 11ss; 96 months with respect to each of
14 Counts 14ss through 21ss, and 23ss through 35ss. All to be served concurrently with
15 each other for a total term of 20 years. Defendant shall receive credit for time served
16 in federal custody prior to sentencing in this matter.” ECF No. 583 at 3. Importantly,
17 twenty years is the mandatory minimum penalty for three of Defendant’s counts of
18 conviction. *See* 21 U.S.C. §§ 841(a)(1), (b)(1)(A)(viii), 846, and 851.

19 The approximately ten remaining years of Defendant’s term of incarceration
20 also weigh against granting Defendant’s request for release. *See* 18 U.S.C. §
21 3553(a)(2)(C); *see also United States v. Lonich*, No. 1:14-cr-00139-SI-1, 2020 U.S.

1 Dist. LEXIS 90634, 2020 WL 26148743, at *3 (N.D. Cal. May 21, 2020) (denying
2 motions for compassionate release, noting, “the Court finds it significant that
3 defendants have served far less than half of their sentences”). Therefore, the Court
4 concludes that the section 3553(a) factors weigh against granting Defendant
5 compassionate release under the circumstances presented in his motions. The Court
6 further concludes that there is insufficient support for finding that Defendant is no
7 longer a danger to the community; this conclusion further supports Defendant’s
8 continued incarceration.

9 Accordingly, having considered all of the factors required by USSG § 1B1.13,
10 as well as those set forth in 18 U.S.C. § 3553(a), **IT IS HEREBY ORDERED** that
11 Defendant’s Motion for Reconsideration, **ECF No. 771**, which the Court construes as
12 a renewed Motion for Sentence Reduction under 18 U.S.C. § 3582(c)(1)(A) through
13 compassionate release, is **DENIED**.

14 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this Order
15 and provide copies to counsel and Defendant.

16 **DATED** March 29, 2021.

17 *s/ Rosanna Malouf Peterson*
18 ROSANNA MALOUF PETERSON
19 United States District Judge
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